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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,385	03/05/2002	Jeffery J. Sheldon	IDEV-020US	8270
7590 06/29/2010 FULBRIGHT & JAWORSKI L.L.P. A REGISTERED LIMITED LIABILITY PARTNERSHIP SUITE 2400 600 CONGRESS AVENUE AUSTIN, TX 78701				
EXAMINER EREZO, DARWIN P				
ART UNIT 3773		PAPER NUMBER		
MAIL DATE 06/29/2010		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/092,385

Applicant(s)

SHELDON, JEFFERY J.

Examiner

Darwin P. Erezzo

Art Unit

3773

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 12, 14, 25 and 26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 12, 14, 25 and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB06)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 3773

DETAILED ACTION

1. This Office action is in response to the applicant's communication filed on 4/13/10.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

Art Unit: 3773

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. Claims 1, 2, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,027,529 to Roychowdhury, et al. in view of US 5,716,365 to Goicoechea et al. (and as evidenced by US 6,251,135 to Stinson).

(claims 1 and 2) Roychowdhury discloses a method of securing an intersection formed from two or more strands **32** of a device suitable for implantation into a living tissue (a stent), the intersection defining at least two sections (seen in Fig. 5), wherein the crossing strands are secured via a weld **34**. Roychowdhury is silent with regards to the crossing strands secured by passing a non-radiopaque material through at least two of the at least sections, wherein the passing includes bending the suture at a location to form a loop; and joining the suture together via a knot to secure the intersection.

However, the step of using a non-radiopaque material to secure two strands in a stent is well known in the art. For example, Goicoechea discloses a method of securing strands of a device suitable for implantation into a living tissue (a stent), the device defining at least two sections (seen in Fig. 4b), the method comprising passing a non-radio opaque material (polypropylene filaments formed as a suture; col. 9, lines 48-51) through at least two of the at least sections, wherein the passing includes bending the suture at a location to form a loop; and joining the suture together via a knot (tie) to secure the two strands.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Roychowdhury to use knots instead of a weld since it has been held that a mere simple substitution of one known element (securing element) for another will yield predictable results. *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1742, 82 USPQ2d 1385, 1396 (2007). Note that the weld of Roychowdhury and the knot of Goicoechea are viewed as well known equivalents for securing strands together.

The examiner is also providing the Stinson reference as an evidence that welding and knotting are well known equivalents (see col. 14, ll. 54-58).

(claims 25 and 26) The above combination of Roychowdhury and Goicoechea discloses a device formed from the modified method above, wherein the device has a body having two crossed strands that are crossed to form an intersection, wherein the two strands have a free end; and a securing material securing the intersection by tying the radiopaque material around the intersection. See the rejection to claim 1.

7. Claim 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roychowdhury, et al. in view of Goicoechea et al., as applied to claim 1, and in further view of The Ashley Book of Knots by Clifford W. Ashley (previously recited).

The above combination of Roychowdhury and Goicoechea discloses the method of securing an intersection formed from two or more crossed strands having an intersection defining at least two sections, wherein securing the intersection comprises the step of tying a non-radio opaque material around the crossed strands at said intersection. Goicoechea is merely silent with regards to how the non-radio opaque

material is tied, which is what is being recited in claim 12. However, Ashley discloses a variety of methods of forming knots. Specifically, Ashley teaches forming a "Lineman's Loop" on page 191 (included with in the Office Action dated 11/04/04). Such a knot is "strong, secure, and easily tied" (p. 191, line 8). Therefore, it would have been obvious to one having ordinary skill in the art of knots to secure the intersecting strands of Goicoechea's stent with a Lineman's Loop, as taught by Ashley, in order to quickly form strong knots.

Response to Arguments

8. Applicant's arguments filed 4/13/10 have been fully considered but they are not persuasive.

The applicant mainly argued that it would have not have been obvious to use the fastening of means of Goicoechea in the device of Roychowdhury. It was argued that "Roychowdhury makes it clear that the only acceptable connection technique is one that fixes the position of the two crossed wires with respect to each other, such as resistance welding, laser welding, ultrasonic welding, induction welding, braising, soldering (3:10-15; 9:5-30), electron beam welding, arc welding, sinter bonding or solid state diffusion bonding, friction welding, and explosive bonding based on pressure shock waves (9:31-39)", see page 5, paragraph 3 of the Remarks. However, this is not found persuasive as the cited portion (in at least 3:10-15), mainly recites a "preferred manner of forming the secured crossings" and does not recite "only acceptable connection technique".

Furthermore, the examiner is providing the Stinson reference as an evidentiary reference that "tying, knotting, crimping, welding" are all well known equivalents in the art and would perform the same function. Thus, one of ordinary skill in the art would have found it obvious to replace a weld with a knot as they would perform the same function.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darwin P. Erez who telephone number is (571)272-4695. The examiner can normally be reached on M-F (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3773

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Darwin P. Erezol/
Primary Examiner, Art Unit 3773